

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2007-000139

04/22/2009

HON. THOMAS DUNEVANT, III

CLERK OF THE COURT
S. Brown
Deputy

MICROCHIP TECHNOLOGY
INCORPORATED

RICHARD WAYNE MEAR

v.

ARIZONA STATE DEPARTMENT OF
REVENUE, et al.

SCOT G TEASDALE

UNDER ADVISMENT RULING

(Defendant's Motion For Protective Order and Plaintiff's Cross-Motion To Compel Production Of Documents)

This Court has previously examined the applicability of the deliberative process privilege in the context of a claim of disparate treatment. *Rigel Corp. v. State of Arizona*, TX2006-050010 (July 26, 2006). It is not necessary for this Court to explore further the parameters of deliberative process privilege, because Plaintiff's request for production fails on relevance grounds. In contrast to *Rigel*, Plaintiff does not allege, with respect to the documents sought, that they will show actual disparate treatment of it as compared to other similarly-situated taxpayers. Rather, it seeks to learn whether employees of the Department of Revenue, in formulating its regulations governing A.R.S. § 43-1170, had reservations about them. The ultimate determination of the legality of Department of Revenue regulations, as of all regulations, is made by the courts. In reaching its decision, the Court employs its own legal analysis. While the Department's final interpretation is given "considerable weight," *Arizona Water Co. v. Arizona Dept. of Water Resources*, 208 Ariz. 147, 154 ¶ 30 (2004), the level of deference is not affected by the degree of certainty held by the Department in its correctness. Evidence as to the existence of dissenting views is therefore irrelevant to the Court's decision. The Department's decision whether to publish its interpretations so as to inform taxpayers of the likely tax treatment of their

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actions is a decision for the Department, not the Court, to make. This, however, has no bearing on the unanimity or lack thereof in formulating those interpretations.

Plaintiff argues, “The proposition that the Department will not be held accountable for its historical intentions and interpretations as likely indicated in the withheld documents is untenable. Internal interpretations would only see the light of day when they support the Department’s litigation position leading to arbitrary and unjust results.” Even if no privilege exists, this is not a basis to require production. The courts adjudicate live controversies, when there has actually been an (allegedly) “arbitrary and unjust result.”

Therefore, IT IS ORDERED:

1. Defendant’s Motion For Protective Order is granted.
2. Plaintiff’s Cross-Motion To Compel Production of documents is denied.